Supreme Court, U.S.
FILED
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No. ——

IN THE

Supreme Court of the United States

H.P.Y., INC.,

Petitioner,

v.

COMMONWEALTH OF PUERTO RICO, *et al.*

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Puerto Rico

PETITION FOR WRIT OF CERTIORARI

Of Counsel:

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June, 2000

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138pp

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Mercado; David Mario Coffey Mercado; Maria Luisa Wilson Mercado; Margarita Maria Wilson Mercado; Richard Wilson Mercado; Manuel Vidro Diana; Israel Vidro Zayas; Mercedes Vidro Zayas; Juan Vila Castillo; José E. Villoch Ocasio; Ángel Zapata; ESTATE OF MARIO MERCADO RIERA – composed by: (a) Eufemia Eileen a/k/a Eileen Mercado Parra, (b) Adriana Luisa Mercado Parra, (c) Eileen Maria Coffey Mercado; (d) David Mario Coffey Mercado, (e) Maria Luisa Wilson Mercado, (f) Margarita Maria Wilson Mercado, y (g) Richard Wilson Mercado; Maricely Zapata Ruiz; the parties known as Fulano de Tal y Mengano de Cual, also all other citizens that acted in concert or in accord with the above mentioned codefendants and have joined in the land invasion and have built structures in the property or reside therein; in relation to the married defendants, whose spouses are unknown are hereby identified and designated as Fulana de Tal, John Doe; Fulano de Tal representing all the unknown defendants; FULANO DE TAL and MENGANO DE TAL, representing all those natural or judicial or legal parties whose addresses and domicile are unknown and who may have interest in the case; to the parties that were brought to the jurisdiction of the courts by the public notice published in the Puerto Rico newspaper El Dia on March 20,1986, in the present judicial proceedings; as well as the certified class whose default was noted on January 19, 1988; As well as all those parties, natural and/or legal who may have an interest, and who may have erected structures and/or had squaterred and/or had caused damages to the property HPY, INC. (Case Number CS851459)

QUESTIONS PRESENTED

1. Whether the rule of law prevails in Puerto Rico?

2. Whether denial, on grounds of unjust enrichment, of property owners' right to "just compensation" for structures built by bad faith trespassers violates the Fifth and Fourteenth Amendments of the United States Constitution?

3. Whether the Puerto Rico appellate court, lacking statutory jurisdiction, erred in interfering with a final, binding, and unappealable judgment, and disregarding a settled stipulation of the parties?

PARTIES TO THE PROCEEDING

There are no other parties to this proceeding besides those listed in the caption. Pursuant to Rule 29.1 of this Court, Petitioner states that it is a Delaware corporation that is not publicly traded, and it has neither a parent nor a subsidiary. Petitioner is owned by United States citizens who reside in the continental United States

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PETITION FOR WRIT OF CERTIORARI

Petitioner, H.P.Y., Inc., ("Petitioner"), respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Puerto Rico, denying a writ of certiorari to review the decision of the Circuit Court of Appeals of Puerto Rico, Ponce Regional Circuit, rendered on August 27, 1999.

OPINIONS AND ORDERS BELOW

The following opinions and orders are not reported, and are reprinted, in translation, in the Appendix to this Petition:

Decision of the Court of First Instance, Ponce Superior Division, rendered on June 4, 1991 (App. at 1a);[1]

Decision of the Court of First Instance, Ponce Superior Division, entered on January 22, 1997 (App. at 25a);[2]

Decision of the Court of First Instance, Ponce Superior Division, entered on August 5, 1998 (App. at 31a);

Decision of the Court of First Instance, Ponce Superior Division, entered on August 14, 1998 (App. at 34a);

Decision of the Circuit Court of Appeals, Ponce Regional Circuit, rendered on August 27, 1999 (App. at 50a);

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[1] All documents included in the Appendix are originally in Spanish. For convenience of the Court, these documents have been translated into English.

[2] This Order was entered based upon a Stipulation on the Designation of a Special Commissioner, executed by the parties on January 17, 1997 (App. at 18a)

Decision of the Supreme Court of Puerto Rico, rendered on January 21, 2000 (App. at 95a);

Decision of the Supreme Court of Puerto Rico, rendered on February 25, 2000 (App. at 96a); and

Decision of the Supreme Court of Puerto Rico, rendered on March 17, 2000 (App. at 97a).

JURISDICTION

On January 21, 2000, the Supreme Court of Puerto Rico declined to issue a writ of certiorari to review the decision of the Circuit Court of Appeals of Puerto Rico, Ponce Regional Circuit. On February 25, 2000, the Supreme Court of Puerto Rico denied Petitioner's motion for reconsideration. On March 17, 2000, the Supreme Court of Puerto Rico denied Petitioner's second motion for reconsideration. This Court has jurisdiction to review the judgments and orders of the Supreme Court of Puerto Rico and Circuit Court of Appeals of Puerto Rico under 28 U.S.C. § 1258.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Fifth Amendment to the United States Constitution provides in relevant part that:

> "No person shall. . .be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

2. The Fourteenth Amendment to the United States Constitution provides in relevant part that:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person

> of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

3. Article II, Sec. 7 of the Constitution of the Commonwealth of Puerto Rico provides in relevant part that:

> "It is recognized as a fundamental right. . .the right to life, liberty and the enjoyment of property. No person shall be deprived of his liberty or property without due process of law, and no person in Puerto Rico shall be denied equal protection under the law. No laws shall be enacted that undermine contractual obligations."

4. Article II, Sec. 9 of the Constitution of the Commonwealth of Puerto Rico provides in relevant part that:

> "No private property shall be taken for public use without just compensation and in the manner prescribed by law."

5. The Statutes of the Commonwealth of Puerto Rico, 31 L.P.R.A. § 1165, provide in relevant part:

> "He who builds, plants, or sows in bad faith on another's land, loses what he has built, planted or sown, without having any right to indemnity."[3]

6. Article 4.002 of the Judiciary Act of Puerto Rico, 4 L.P.R.A. § 22K, provides in relevant part:

> The writ of certiorari shall be executed by filing a petition to such effects within thirty (30) days following the date the copy of the notice of resolution is filed of record in the case. This term is jurisdictional.

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[3] Translation of this statute Appears in *Amezquita v. Hernandez-Colon*, 581 F.2d 8, 13 (1st Cir. 1975).

7. Rule 32 of the Rules of the Circuit Court of Appeals of Puerto Rico 4 L.P.R.A. App. XXII, A, R.32, provides in relevant part:

> The writ of certiorari shall be executed by filing a petition to such effects within thirty (30) days following the date the copy of the notice of resolution is filed of record in the case. . . . The term provided herein shall be of strict compliance except when there are special duly-grounded circumstances in the writ of certiorari.

8. Article 1204 of the Civil Code of Puerto Rico, 31 L.P.R.A. §3343, provides in relevant part:

> In order that the presumption of res adjudicata may be valid in another suit, it is necessary that, between the case decided by the sentence and that in which the same is invoked, there be the most perfect identity between the things, causes, and persons of the litigants, and their capacity as such.

STATEMENT OF THE CASE

This case should be of great interest to this Court. It involves the largest land invasion in the history of Puerto Rico[4]

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[4] The Chief Judge of the United States District Court for the District of Puerto Rico observed nearly 30 years ago in *Santiago-Rodriguez v. Torres-Massa*, 342 F.Supp. 1152, 1153 (D.P.R. 1972):

> Due to many and various reasons which we need not elaborate but which include overpopulation, unfulfilled expectations, and the need of many to have a home of their own, together with the unavailability of housing at a cost which the poor of Puerto Rico can afford, Puerto Rico has experienced during the past year or so a series of incidents which have become known as land invasions. These are characterized mainly by a group of homeless persons accompanied in some occasions by a sprinkling

and certain outrageous[5] conduct in the ensuing litigation by the Commonwealth of Puerto Rico. The trespassers usurped an area of more than three hundred (300) *cuerdas*[6] of real estate, where more than three thousand (3,000) families invaded the land and built houses. Among the owners of the illegally occupied land is the Petitioner, H.P.Y., Inc., a corporation organized under the laws of Delaware with its principal place of business in Winter Park, Florida. H.P.Y., Inc. has been litigating for 15 years to receive just compensation for what this Court has recognized as the "special kind of injury [that an owner suffers] when a stranger directly invades and occupies the owner's property."[7]

The invasion began in 1985, when a group of squatters commenced their trespass, in bad faith, on Petitioner's land and other adjacent land owners. The invasion spread rapidly, and had the potential of becoming a problem of public order. In response, the Commonwealth of Puerto Rico and the Regulations and Permits Administration (ARPE, as known by its Spanish acronym) filed a motion in the Superior Court of Ponce for provisional injunction against the squatters and the owners of the land. They alleged in the motion that the

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> of speculators, who will occupy a parcel of rural land and build their homes on the land. . . .

[5] The Court of First Instance held (App. at 36a, 43a, 48a) that the Commonwealth of Puerto Rico was responsible for "assuming an unlawful position and causing procedural confusion. . . . [T]he Government is accused of bad faith in the circumstances of this case. . . . [The] conduct . . .[of the Commonwealth of Puerto Rico] can be categorized as reckless, obtuse and intransigent." On Appeal, the Circuit Court of Appeals of Puerto Rico stated that "we respect the decision of the Court of First Instance that the procedural conduct shown by the Commonwealth of Puerto Rico in this case was reckless and contradictory." (App. at 84a).

[6] A *cuerda* is 3930.396 square meters in area, slightly less than an acre.

[7] *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 436 (1982).

buildings constructed by the squatters were violating ARPE laws and that the construction was being carried out in common agreement with the landowners and with the approval of same. The landowners strenuously denied these allegations.

In view of these events, that same year, both H.P.Y., Inc. and the Mario Mercado Estate filed a lawsuit against the squatters in the Superior Court of Ponce, in which they requested that the squatters be certified as a class of defendants, that a injunction for possession be issued, and that an order for precarious eviction be entered against the squatters.[8] The Court certified the defendants as a class. While the litigation was pending, the number of squatters rapidly increased.

In 1988, three years after the invasion began, the Commonwealth of Puerto Rico filed in the Expropriations Court a Petition of Expropriation of 199 *cuerdas* of land belonging to the Mario Mercado Estate. H.P.Y., Inc. tried to intervene in that case on three separate occasions, alleging that the Commonwealth had included a large part of its land in the plan submitted to the Court with the Petition for Expropriation. The Commonwealth opposed the intervention of H.P.Y., Inc., and the Court of Expropriations denied the requests for intervention finding that the Commonwealth did not have any intention to expropriate land belonging to H.P.Y., Inc. The Expropriations Court ordered the Commonwealth to correct the plan to reflect that the land of H.P.Y., Inc. was not part of the expropriation, but the Commonwealth never made the correction.

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[8] The government's lawsuit and Petitioner's lawsuit were consolidated into a single case. However, one land owner in the consolidated action, Alfonso A. Hernandez Ortiz, was successful in evicting approximately 32 squatters in 1997 and Mr. Hernandez Ortiz was removed from the case.

Also during 1988, incredibly, three public corporations (the Electric Power Authority, the Aqueduct and Sewer Authority and the Rural Housing Administration), using federal funds,[9] started to build infrastructure on the land belonging to the Mario Mercado Estate, which had been expropriated, and the land belonging to H.P.Y., Inc., which had not been expropriated. In other words, while the Commonwealth refused to grant H.P.Y., Inc. just compensation for its plots of land, these public corporations were invading H.P.Y., Inc.'s land, and taking the land from H.P.Y., Inc. without just compensation, with the approval of the Commonwealth.

Due to the actions of the government through these public corporations, H.P.Y., Inc.[10] had no other remedy[11] than to continue with its lawsuit for possessory injunction, precarious eviction and accession. On June 4, 1991, the Superior Court of Ponce entered judgment in the consolidated action, ordering the squatters to cease and desist from disturbing the plaintiffs in the possession of the property in question, and to vacate the property of the plaintiffs, leaving it free and clear in favor of the legitimate owners.[12] The Court also

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[9] Petitioner's Puerto Rican counsel has received documents showing that several million dollars were spent on infrastructure by the Electric Power Authority, a government owned corporation.

[10] The Mario Mercado Estate also remained a plaintiff in the consolidated action because it owned 17 cuerdas of land that had not been expropriated by the government, but were usurped nonetheless.

[11] H.P.Y., Inc. filed a civil action in the United States District Court for the District of Puerto Rico under 42 U.S.C. § 1983 against the Electric Power Authority, the Puerto Rico Aqueduct and Sewer Authority, and the Rural Housing Administration, alleging that these public agencies aided and abetted the squatters. This suit was dismissed and the dismissal was affirmed by the First Circuit in 1993 (App. at 98a).

[12] It is important to remember that in a different case in the Expropriations Court, the Commonwealth of Puerto Rico had expropriated 199 *cuerdas* of land belonging to the Mario Mercado Estate, which was

determined that, since the squatters never acted in good faith in illegally possessing the invaded land, they lost ownership in the buildings and infrastructure in accordance with the statutes of Puerto Rico.[13] This judgment was duly noticed to all the parties, including the Commonwealth of Puerto Rico, and in order to give notice to the squatters, it was published in a newspaper of general circulation in Puerto Rico. No one made a timely request for reconsideration of the judgment or filed a timely notice of Appeal or petition for certiorari. Hence, the judgment became final, binding, and not subject to appeal.

At the moment the Court of First Instance was ready to execute the judgment to evict the trespassers, the Commonwealth filed an objection alleging that there was a discrepancy in the boundaries and, therefore, the eviction should not be carried out. H.P.Y., Inc. replied that the government's position was contrary to positions it had taken in the expropriation suit, in which the government had stated that the property to be expropriated did not include any land belonging to H.P.Y., Inc. In order to resolve the dispute, the Court of First Instance appointed a court expert, Julio Rios, a professor of surveying at the University of Puerto Rico. On

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part of the land covered by the invasion. Therefore, on July 2, 1991, the Commonwealth of Puerto Rico requested a *nunc pro tunc* amendment to the judgment that had been handed down so that the judgment would exclude from execution of the judgment the 199 *cuerdas* of land expropriated by the Commonwealth from the Mercado Estate. On April 10, 1992, the Superior Court issued an order to execute the judgment which excluded the 199 *cuerdas* of land already expropriated by the Commonwealth of Puerto Rico. However, another 17 *cuerdas* of land belonging to the Mario Mercado Estate, and the 90 *cuerdas* of land belonging to H.P.Y., Inc. were not excluded, and were thus covered by the Judgment.

[13] See Statutes of the Commonwealth of Puerto Rico, 31 L.P.R.A. §1165, cited above.

July 28, 1992, the expert submitted his report which confirmed the position of H.P.Y., Inc. that the Commonwealth had included its land in the petition for expropriation.

However, the Commonwealth ignored the expert's report. The position of the Commonwealth was not based on the rule of law, but on political considerations. The more than 3,000 bad faith trespassers represented a substantial voting bloc in the upcoming 1992 elections. Pre-election opinion polls showed the election was a dead heat. The ruling party feared a loss of power. Thus, the government continued to oppose the eviction of the squatters and requested that the Court of First Instance at Ponce stay the eviction order until the Expropriations Court could determine the boundaries of the expropriated property. The Court of First Instance stayed the eviction order on the grounds that the Expropriations Court had exclusive jurisdiction to determine the boundaries of an expropriated property. On December 8, 1995, the Expropriations Court entered a judgment providing that the government had expropriated 199 *cuerdas* of land belonging to the Mario Mercado Estate and that the property of H.P.Y., Inc. was not included in the expropriated area.[14]

Because the judgment of the Expropriations Court clarified the boundaries of the expropriated property, on February 22, 1996, H.P.Y., Inc. again requested the Court of First Instance at Ponce, in the consolidated action, to immediately evict those who had usurped its property. Surprisingly, the government once again opposed the eviction request, arguing that when it filed its petition for expropriation in 1988, its intention was to expropriate all of the invaded land for the benefit of the squatters, reversing its earlier positions in an

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[14] The judgment was based on a settlement between the Commonwealth and the Mario Mercado Estate.

apparent attempt to deny Petitioner's rights. Thus, the Commonwealth continued to make self-contradictory arguments, for it had consistently argued in the Expropriations Court that it had no intention of expropriating any land belonging to H.P.Y., Inc. and the only expropriation was 199 *cuerdas* of land belonging to the Mario Mercado Estate.

There were long hearings in the consolidated action in the Court of First Instance at Ponce during March to May 1996. Then, on May 14, 1996, Mr. Leandro Peña, Assistant Secretary of the Department of Housing and Executive Director of the Housing Development and Improvement Administration, made an institutional commitment and a formal promise, in open court, on behalf of the Commonwealth of Puerto Rico, to acquire the physical improvements and the invaded land that had not been expropriated in accordance with applicable law as determined by the Court of First Instance at Ponce (the 17 *cuerdas* of land belonging to the Mario Mercado Estate and the 90 *cuerdas* of land belonging to H.P.Y., Inc.).[15] As discussed below, the Court of First Instance at Ponce later concluded that the Commonwealth of Puerto Rico agreed to acquire the private properties, with all the consequence of accession, compensation and appraisal derived from judgment and the law.[16]

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[15] This commitment is discussed in the decision of the Circuit Court of Appeals of Puerto Rico dated August 27, 1999, at p. 25 (App. 74a). The Commonwealth made a partial payment of compensation of $2,000,000 to Estate of Mercado and H.P.Y., Inc., which was divided equally among them.

[16] Decisions of the Court First Instance, Ponce Superior Division entered on August 5 and 14, 1998, App. at 31a and 34a.

On January 22, 1997, the Court of First Instance at Ponce issued an order,[17] based upon a stipulation[18] between the Commonwealth and H.P.Y., Inc., designating Domingo Raffucci, a former judge of the Expropriations Court, as Special Commissioner to settle the following disputes: (a) the value of the land as of the date of May 15, 1996; (b) the value of the buildings located on the land, subject to determination by the Court on the appropriateness of compensation; and (c) the value of the infrastructure, subject to determination by the Court on the appropriateness of compensation. Incredibly, the Commonwealth reneged on its formal commitment to acquire the land invaded by the squatters (including the houses and the infrastructure). The Commonwealth's commitment had been embodied in a stipulated order, and the order had become final, binding, and not subject to appeal. However, the Commonwealth reversed its position, and took the opposite position that its commitment was only to compensate the owners for the land per se, not for the houses or the infrastructure.

In July, 1997, the Special Commissioner submitted his report on the appraisal of the 90 *cuerdas* of land belonging to H.P.Y., Inc., determining that the value per *cuerda* of the 90 *cuerdas* of land (not including the illegally built structures) was $37,982.16, for a total of $3,418,508.80. The Court of First Instance, in its ruling of August 5, 1998,[19] approved the report submitted by the Special Commissioner, and in its ruling of August 14, 1998,[20] reiterated that the owners had the right to just compensation for the invaded land and also for the structures erected on the land, since these lands and

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[17] App. at 25a.

[18] App. at 18a.

[19] App. at 31a.

[20] App. at 34a.

structures belonged to them by accession,[21] as the trespassers had acted in bad faith.

The Commonwealth appealed these rulings in a Petition of Certiorari to the Circuit Court of Appeals of Puerto Rico on October 5, 1998. Both H.P.Y., Inc. and the Mario Mercado Estate opposed the appeal. On August 27, 1999, the Circuit Court of Appeals of Puerto Rico issued a decision[22], in which it purported to set aside, without jurisdiction to do so, the final and binding judgment of June 4, 1991, and improperly amended the stipulation signed by the Commonwealth and H.P.Y., Inc. more than two years previously.[23] This decision stated that the landowners, for reasons of unjust enrichment, did not have a right to compensation for the trespassers' buildings or infrastructure erected on their land (theirs by accession). The Circuit Court of Appeals of Puerto Rico also changed the stipulated date to determine the value of the expropriated land to November 3, 1988, some 8 years earlier, setting aside the date of May 15, 1996, which date H.P.Y., Inc. and the Commonwealth had stipulated to as the date to determine the value.[24] The Court did this unilaterally, because the government, as appellant, never asked the date to be changed. In addition, the Court of Appeals altered or modified the contract of the parties as an appellate court and not as a court of equity deciding the issue as a court of first instance.

On December 2, 1999, Petitioner filed a timely petition for appeal or certiorari in the Supreme Court of Puerto Rico from

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[21] This was the ruling in the final judgment dated June 4, 1991, App. at 16a.

[22] App. at 50a.

[23] Stipulation dated January 17, 1997 (App. at 18a)

[24] App. at 27a.

the decision of the Circuit Court of Appeals of Puerto Rico. On January 21, 2000, the Supreme Court of Puerto Rico dismissed Petitioner's petition. Thereafter, the Petitioner filed two timely motions for reconsideration, the last of which was denied by the Supreme Court of Puerto Rico on March 17, 2000.

REASONS FOR GRANTING THE WRIT

I. The Opinion Below Conflicts With Decisions of This Court and the United States Court of Appeals for the First Circuit, and Raises Important Questions Concerning Fair Play, Protection of Constitutional Rights, and Whether the Rule of Law Prevails in Puerto Rico

Since 1987, this Court has been moving in the direction of greater protection of property rights.[25] Property rights, and, in particular, rights in land, have always been fundamental to, and part of, the preservation of liberty and personal freedom in the United States.[26] In its recent decisions, this Court has been taking a pro-privatist stance and strengthening the Fifth Amendment's takings clause.[27] As a result, heightened scrutiny must be applied to the decision of the Circuit Court of Appeals of Puerto Rico in this case.

This case involves the largest known land invasion in Puerto Rican history. The decisions of the appellate courts in Puerto Rico, as they pertain to the facts of this case, raise

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[25] Hon. Leon D. Lazer, "The Supreme Court's Land Use Decisions," 11 Touro L. Rev. 421 (1995).

[26] Callies, D. L., "Regulatory Takings and the Supreme Court: How Perspectives on Property Rights Have Changed from Penn Central to Dolan, and What State and Federal Courts Are Doing About It," 28 Stetson L. Rev. 523, 526 (1999).

[27] Watson, M. S., "The Scope of the Supreme Court's Heightened Scrutiny Takings Doctrine," 20 Whittier L. Rev. 181, 209 (1998).

serious questions about whether the rule of law prevails in Puerto Rico.[28] The right to just compensation for homes and infrastructure built by bad faith trespassers contained in a final, binding and unappealable judgment was abrogated by an appellate court without jurisdiction. This decision abrogated 100 years of statutory law in Puerto Rico.[29] In addition, an appellate court freed one party from a contractual stipulation even though neither party sought a reformation in equity before the lower court or the appellate court. The result of the decision, if left unreviewed and unchanged, will be that the Puerto Rican appellate courts have decided the compensation question inconsistently with the requirements of the Fifth Amendment,[30] *First Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304, 311 (1987)(California courts decided the compensation question inconsistently with the requirements of the Fifth Amendment).

Government action that works a taking of property rights necessarily implicates the "constitutional obligation to pay just compensation," *Armstrong v. United States*, 364 U.S. 40, 49 (1960), quoted with approval in *First Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304, 315 (1987). When the government initiates

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[28] Senator John W. Warner of Virginia, in a speech on the Senate floor last year, referring to trespassers who built houses at the U.S. Naval base on Vieques Island, Puerto Rico, in a similar manner to this case, criticized the "unrestrained civil disobedience, in defiance of law" in Puerto Rico, as quoted in The *Virginian-Pilot*, Norfolk, VA, October 30, 1999.

[29] See Statutes of the Commonwealth of Puerto Rico, 31 L.P.R.A. §1165, cited above.

[30] The Due Process Clause and other constitutional provisions are Applicable in the Commonwealth of Puerto Rico in the same manner as they Apply to the States. *Riviera-Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 7 (1982).

condemnation proceedings, it concedes the landowner's right to receive just compensation and seeks a mere determination of the amount of compensation due, *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 712 (1999). H.P.Y., Inc. had acquired ownership of the buildings and infrastructure built on invaded land by statute[31] and by the right of accession set forth in the final, binding and unappealable judgment dated June 4, 1991.[32] The Circuit Court of Appeals of Puerto Rico disregarded the law of the case, the statutes of Puerto Rico,[33] and, more importantly, the stipulation of the parties[34] to conclude, improperly, that the doctrine of unjust enrichment prevented the Petitioner from being compensated for structures built by bad faith trespassers.

For Fifth Amendment and due process reasons, the Court of Appeals of Puerto Rico could not revoke the rights to just compensation for the buildings and infrastructure that had already been acquired in a final and binding judgment. The decision of the Puerto Rico Court of Appeals to deny

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[31] See Statutes of the Commonwealth of Puerto Rico, 31 L.P.R.A. §1165, cited above.

[32] App. at 16a. The decision of the Circuit Court of Appeals of Puerto Rico dated August 27, 1999, at pp. 15-16, recognized that the Court of First Instance on June 4, 1991 "concluded that the properties had been subject to illegal invasion and that the squatters did not have title to the properties. It determined that the occupants were builders in bad faith, since they did not have any right whatsoever to continue in possession of their homes. The Court ordered eviction of the squatters from the property." (App. at 65a). However, the Court of Appeals chose to ignore that ruling because of "the imposition on the Government of a payment of millions of dollars for these items," ibid., p. 38 (App. at 86a), clearly violating Petitioner's constitutional rights.

[33] See text accompanying footnote 3, supra.

[34] App. at 18a.

Petitioner's right to compensation for the buildings and infrastructure also conflicts with the ruling of the United States Court of Appeals for the First Circuit in *Amezquita v. Hernandez-Colon*, 518 F.2d 8, 13 (1st Cir. 1975)(Puerto Rican trespassers do not own homes built on invaded land,[35] and thus have no protected property or privacy interests). In that case, it should be noted that the Commonwealth of Puerto Rico had argued that squatters do not own homes built on invaded land, a position directly at odds with the Commonwealth's position in this case.

In addition, the Court of Appeals of Puerto Rico did not have jurisdiction to review the judgment of June 4, 1991, for reasons set forth in Article 4.002 of the Judiciary Act of Puerto Rico[36] and Rule 32 of the Rules of the Circuit Court of Appeals of Puerto Rico,[37] because there must be a timely appeal. There was no timely appeal by the Commonwealth of the earlier judgment and, hence, the Circuit Court of Appeals of Puerto Rico could not intervene in that judgment. It also violated the principle of *res judicata* established in Article 1204 of the Civil Code of Puerto Rico.[38]

The Circuit Court of Appeals of Puerto Rico seized on the doctrine of unjust enrichment, because it thought that the government's obligation to pay Petitioner for the buildings and infrastructure would cost too much money.[39] Apparently,

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[35] See text accompanying footnote 3, supra, citing the statute "He who builds...in bad faith on another's land, loses what he has built..."

[36] 4 L.P.R.A. § 22K.

[37] 4 L.P.R.A. App. XXII, A, R.32.

[38] 31 L.P.R.A. § 3343.

[39] The decision of the Circuit Court of Appeals of Puerto Rico dated August 27, 1999, at p. 38, expresses concern about "the imposition on the Government of a payment of millions of dollars..." (App. at 86a).

the Circuit Court of Appeals of Puerto Rico thought it was protecting the public purse strings. However, such a purpose runs counter to the constitutional requirement of just compensation. This Court has made it clear that "a strong public desire to improve the public condition [will not] warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 416 (1922), quoted with approval in *Dolan v. City of Tigard*, 512 U.S. 374, 396 (1994).

The Circuit Court of Appeals of Puerto Rico, exceeding its jurisdiction, also improperly changed the date of determining the value of the expropriated land to November 3, 1988, some 8 years earlier, setting aside the date of May 15, 1996, which date H.P.Y., Inc. and the Commonwealth had stipulated to as the date to determine the value.[40] This decision was erroneous for several reasons. This issue was not before the court because the Commonwealth did not raise it on appeal. The Commonwealth never sought to change the 1996 date. Furthermore, the Commonwealth would have been precluded from raising this issue on appeal by the doctrine of cases such as *United States v. Zenon*, 711 F.2d 476, 478 (1st Cir. 1983)(Breyer, J.)(we hold appellants to the basic rule that an issue not presented to the district court cannot be raised for the first time on appeal). Here, the decision was more egregious because the appellate court raised and applied this theory sua sponte and without jurisdiction.

A settled stipulation to use the 1996 date is a contract between the parties, which obligates them to comply with same. Thus, once the parties have consented, the stipulation cannot be changed by an appellate court. Here, the stipulation was not only an agreement of the parties, it was also approved

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[40] App. at 27a.

by an order of the Court of First Instance in Ponce.[41] That order became final, binding and not subject to appeal.

Finally, the valuation of property which has been taken must be calculated as of the time of the taking, *First Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304, 320 (1987). Between 1988 and 1996, the Commonwealth maintained in the expropriation proceedings involving Estate of Mercado's 199 *cuerdas* of land that it had no intention to expropriate the land of H.P.Y., Inc. Therefore, use of the 1988 date for a government taking is inconsistent with the Commonwealth's position in the expropriation litigation.

Throughout the 15 years of litigation over this land invasion, the Commonwealth of Puerto Rico has tolerated and encouraged the illegal actions of the squatters, and obstructed legal proceedings brought by the property owners, in effect protecting the squatters for political reasons, in total disregard of the law and Petitioner's constitutional rights. It is highly unusual for a government to protect trespassers. Thus, Petitioner was treated in an unfair and irrational manner by the government. See, e.g. *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 699 (1999)(Del Monte Dunes emphasized the shifting and sometimes inconsistent positions taken by the city throughout the process, and argued that it had been treated in an unfair and irrational manner by the government). Add to this the fact that the Circuit Court of Appeals of Puerto Rico modified a final and binding judgment and amended a stipulation between the parties, which had the approval of the Court of First Instance at Ponce. These events violated the rule of law that governs Puerto Rico in terms of property law, final and binding judgments, and settled stipulations, resulting in

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[41] App. at 25a.

Petitioner's constitutional rights being ignored and violated. They raise troubling questions about fundamental fairness and due process of law, which cry out for review by this Court.

CONCLUSION

Because the decision of the court below raises serious questions about whether the rule of law prevails in Puerto Rico and whether the question of compensation for a taking was decided inconsistently with the requirements of the Fifth and Fourteenth Amendments, a writ of certiorari should issue to review the decision below. If left unreviewed, legal chaos will continue in Puerto Rico with respect to property rights, and whether appellate courts on appeal may interfere with final, binding, and unappealable judgments, and disregard, or modify and alter, settled stipulations of the litigants. This is an opportunity for the Court to send a clear message that land invasions will not be tolerated in Puerto Rico or elsewhere in the United States.

Respectfully submitted,

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